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IN THE

Supreme Court of the United States

SABRI I. SAMIRAH,

Petitioner,

v.

JOHN ASCHROFT,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF *AMICUS CURIAE* OF CONCERNED IMMIGRANTS' RIGHTS AND ARAB AND MUSLIM CIVIL RIGHTS ORGANIZATIONS IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE[1]

The Muslim Bar Association (MBA) is a non-profit corporation founded in 1997 to represent the unique interests of over 100 American-Muslim attorneys in Illinois. MBA's corporate purposes include advancing and improving the administration of justice, advancing the delivery of legal services to all communities, particularly the American-Muslim community, and serving the general welfare of the community through educational programs in all fields of law. In furtherance of these purposes, MBA has been at the forefront of civil liberties issues in Illinois. In the aftermath of the tragic September 11, 2001 terrorist attacks, Illinois has seen too many instances of religious and racial profiling, and a general targeting of Muslim and Arab communities as part of overzealous investigations and prosecutions in the "war on terror." MBA has worked to safeguard the civil liberties of American-Muslims in Illinois who, like Dr. Samirah, have been victims of the sweeping generalizations employed in assessing terrorism and other issues of "national security." MBA joins its fellow *amici curiae* in support of Dr. Samirah's petition for certiorari and urges this Court to grant certiorari so that it may review the government's actions vis-à-vis Dr. Samirah and reject such actions that result in an undermining of the American-Muslim confidence in the rule of law in the United States.

The Council of Islamic Organizations of Greater Chicago (CIOGC) is a federation of approximately 50 Islamic centers, mosques, academic institutions, schools, civic and professional organizations, and social service groups. Through its

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[1] Pursuant to Rule 37.2 of the Rules of this Court, the parties have consented to the filing of this brief. The parties' letters of consent have been lodged with the Clerk. This brief was not written in whole or in part by counsel for a party, and no person or entity other than the *amici curiae* has made a monetary contribution to the preparation and submission of this brief.

member organizations, the Council represents the collective interests and viewpoints of over 400,000 individual Muslims in Chicago's greater vicinity. The CIOGC has no stake in the parties to this litigation or the result of this case; however, it is concerned about the disproportionate impact of the Justice Department's actions on the American-Muslim community. Since September 11, 2001, American-Muslims have been subjected to an unprecedented number of incidents of anti-Muslim bias, exhibited in various forms and perpetrated by various individuals and groups at all levels of society. Among the challenges facing the American-Muslim community in Chicago are detentions and deportations of Muslim men and families, in many cases without due process of law and via the use of secret evidence. Additionally, the CIOGC is deeply concerned that aliens and citizens alike may lose the ability to bring constitutional and statutory challenges to actions taken by the Attorney General of the United States as a result of the Appellate Court's decision in this case.

The Illinois Coalition for Immigrant and Refugee Rights (ICIRR) is a membership organization comprised of more than 130 community and faith-based groups, service providers, educational institutions, and other agencies that work with and represent the diverse immigrant populations. ICIRR educates and organizes immigrant and refugee communities to assert their rights and responsibilities, promotes citizenship and civic participation, monitors and analyzes immigrant-related issues, and informs the general public about the positive contributions of newcomers to the quality of life in the Unites States. ICIRR has been deeply concerned with the impact of myriad laws, policy changes, and other initiatives undertaken by the federal government in the aftermath of the September 11, 2001 terrorist attacks on immigrants and refugees. ICIRR is especially critical of initiatives that have targeted Muslim, Arab, and South Asian immigrants in the U.S.; initiatives that have been cloaked in secrecy and that have created a climate of fear and

intimidation in the immigrant communities. ICIRR believes that the INS' secretive decision to exclude Dr. Samirah, violated not only his due process rights, but also set a terrifying precedent for arbitrary and unaccountable decision making by the Department of Homeland Security. For these reason, ICIRR joins with its fellow *amici curiae* in urging this Court to grant Dr. Samirah's petition for certiorari.

The American-Arab Anti-Discrimination Committee (ADC) is a civil rights organization committed to defending the rights of people of Arab descent and promoting their rich cultural heritage. ADC, which is non-sectarian and non-partisan, is the largest American-Arab grassroots and civil rights organization in the United States. It was founded in 1980 by former United States Senator James Abourezk; has 38 chapters nationwide, and members in all 50 States. ADC is at the forefront in addressing discrimination and bias against Arab Americans and Muslims wherever it is practiced. Through its various efforts, ADC has made great strides in correcting anti-Arab stereotypes, prejudice, and fear. Since September 11, 2001, the American-Arab and Muslim communities have been subjected to a wave of policies and actions that single them out for particularly harsh or difficult treatment. These have ranged from lengthy pretextual detentions, to private acts of retaliation and violence documented by the Equal Employment Opportunity Commission (EEOC), FBI, and the Office of the Inspector General at the U.S. Department of Justice. In many cases, the discrimination and prejudice has manifested in more subtle and insidious ways, such as minor effectual changes in the immigration policies and procedures that, either directly or indirectly target Arab and Muslim immigrants for increased security, based solely on their national origin, religion, and or gender. ADC is committed to eradicating even these more insidious forms of discrimination in the interest of preserving the constitutional guarantees of Due Process and Equal Protection to all, inasmuch as it views those guarantees as

essential rights that form the foundations of this nation. ADC believes that only by safeguarding these rights for individuals can the courts affirm the solidly American principles of constitutional democracy that have been justly championed by this nation for decades.

The principal purpose of this brief is to explain to the Court the unconstitutional and patently unfair method by which the government has excluded Dr. Samirah from the United States and to explain the profound ramifications such actions will have on all immigrants in the United States, and particularly on those immigrants who are Muslim or are of Arab descent.

SUMMARY OF ARGUMENT

The Executive Branch's revocation of Dr. Samirah's advance parole authorization, while he was literally a few hours away from returning to the United States, with no advance notice or due process of law sets a terrifying precedent for immigrants who avail themselves of the advance parole process, and particularly for Muslim and Arab immigrants who feel like they are being singled out unfairly for no reason other than their faith and national origin. By denying Dr. Samirah his basic constitutional and statutory rights, the government's message is loud and clear—that in the wake of the tragic events of September 11, 2001, and the ensuing war on terrorism, it no longer has to abide by the rule of law—particularly when it comes to the civil liberties of Muslims or Arab residing in the United States. The Seventh Circuit's answer that it has no jurisdiction over this case—as Dr. Samirah was no longer on U.S. soil when his advance parole was revoked—is highly unsatisfying and completely irreconcilable against this Court's mandate that foreign nationals who have lived in the United States for some amount of time and have established roots here, are entitled to certain due process protections. Furthermore, by abdicating its vital judicial oversight role, the Seventh Circuit had given tacit approval to the government's highly unjust and uncon-

stitutional actions. Given the importance of the issues to the American-Muslim community and the grave practical consequences of the Seventh Circuit's decision on immigrants' rights, this Court's review is undoubtedly warranted.

ARGUMENT

I. THE GOVERNMENT'S EXCLUSION OF DR. SAMIRAH VIOLATES LONG STANDING CONSTITUTIONAL AND STATUTORY RIGHTS ENJOYED BY FOREIGN NATIONALS.

There can be no doubt that foreign nationals,[2] like Dr. Sabri Samirah, who have resided in the United States for some significant amount of time are afforded the right to life, liberty, and property, which cannot be deprived without due process of law as dictated by the Fifth Amendment of the U.S. Constitution. In fact, with respect to immigration related proceedings, Congress has created certain procedures and regulations which are meant to ensure that the government conducts a hearing where foreign nationals can object to the government's decision to exclude or deport them from the United States. 8 U.S.C. § 1229a.

The Court of Appeals for the Seventh Circuit failed to address both the constitutional rights and the statutory rights that were ignored when the federal government prevented Dr. Samirah from returning back to his home in Illinois after it expressly permitted him to visit his sick mother in Jordan. *Samirah v. O'Connell*, 335 F.3d 545 (7th Cir. 2003). The government violated Dr. Samirah's most basic rights to procedural due process as it decided to exclude him on the basis of certain evidence, yet it refused to allow him an opportunity to examine such evidence. The government's actions also violated Section 240 of the Immigration and

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[2] The term "foreign national" is used synonymously with the term "alien."

Nationality Act, which clearly provides for certain procedures including a formal hearing, that are due to any foreign national whose admission or removal is being determined. 8 U.S.C. § 1229a. The government's action circumvented both the U.S. Constitution and immigration statutes by summarily revoking the permission it gave Dr. Samirah to leave the country as he waited for the completion of his application to adjust his status to that of a permanent resident. Dr. Samirah and many other foreign nationals who rely on and have embraced the immigration statutes and the U.S. Constitution will suffer a tremendous loss if the government's action is sanctioned by the Court. The appellate court's decision must be reversed to unequivocally affirm that we are a nation that believes in the rule of law and not the arbitrary and unaccountable exercise of government power.

A. The Fifth And Fourteenth Amendment Of The U.S. Constitution Grants Procedural Due Process To Foreign Nationals Who Are Deprived Of Their Life, Liberty, Or Property.

Courts have consistently ruled that foreign nationals who live in the United States are entitled to procedural due process rights guaranteed by the Fifth and Fourteenth Amendments of the U.S. Constitution. *Landon v. Plascencia*, 459 U.S. 21 (1982). From the moment foreign nationals arrive in the country they benefit from enumerated constitutional rights including procedural due process. *See Id.* at 34 (granting due process rights to respondent who was detained for transporting illegal aliens across the Mexican border because she had major interests at stake including the right to stay and work in the United States and the right to rejoin her immediate family); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (ruling that the Due Process Clause applied to petitioners who were removed from the country on the basis of criminal convictions because "once an alien enters the country, the legal circumstances change[]" even if the entrance was

illegal); *Chew v. Colding*, 344 U.S. 590, 598 (1953) (ruling that even if statute or regulation permitted the exclusion of an alien who was a lawful resident, the alien would still be given a fair opportunity to be heard). Foreign nationals are granted these rights because as they lead their lives in the United States they become part of our national fabric by establishing new homes, joining the work force, raising their families, paying taxes, purchasing goods and services, and participating in civic activities. Liberty interests are created when immigrants make the United States their home and these interests expand as immigrants spend more time solidifying their roots in our nation. *See Landon*, 459 U.S. at 32-33 (granting constitutional protections to resident alien who had left the country because she had already gained admission and began to develop "ties that go with permanent residence"); *Johnson v. Eisentrager*, 339 U.S. 763, 770-771 (1950) ("The alien, to whom the United States has been traditionally hospitable, has been accorded a generous and ascending scale of rights as he increases his identity with our society").[3]

Dr. Samirah and many other foreign nationals, like him, have not only created a home for themselves in this country, but have also contributed to and become part of their respective communities all across the country. Dr. Samirah has studied and earned degrees at DePaul University and University of Illinois at Chicago. He has engaged himself in the civic opportunities available in the United States by establishing many non-profit organizations that encourage Muslims to involve themselves in the political system to

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[3] *See also* Charles D. Weisselberg, *The Exclusion and Detention of Aliens: Lessons from the Lives of Ellen Knaff and Ignatz Mezei*, 143 University of Penn. L.R. 933, 1020-1022 (1995) (advocating the constitutional analysis used by Supreme Court in *Landon v. Plasencia*, which granted due process protection to aliens based on their contacts with our country).

further their various causes. In 1998, he founded the United Muslim American Association, an organization whose very mission is to encourage American Muslims to be politically active. He has met with a number of political leaders, including First Lady Laura Bush. He has garnered the respect of many lawmakers and has testified before the Illinois Senate Health and Welfare Committee. His civic involvement is truly an example of an immigrant becoming an "American" by validating the best principles of American democracy and its political freedoms that are sorely lacking in many parts of the world. Perhaps most importantly, Dr. Samirah and his wife, a grade school teacher, have established the deepest roots imaginable by raising three U.S. born children within the American-Muslim community in Chicago. In the particular context of Dr. Samirah's deep roots in our country, especially his family ties, it is undeniable that the government has deprived him of very strong interests in remaining in the United States.

There are many foreign nationals across the country that are similarly situated as Dr. Samirah in that they have lived in this country as law-abiding residents and have applied for adjustment of status to become permanent residents. Further, many of them have also been granted advance parole to attend to personal affairs. The government cannot be permitted to ignore the Due Process Clause by revoking advance parole without allowing any form of grievance. *See Chew*, 344 U.S. at 601 (an alien's "status as a person within the meaning and protection of the Fifth Amendment cannot be capriciously taken" without a hearing).

B. Immigration Statutes And Regulations Dictate That Immigrants Granted Advance Parole Cannot Be Excluded Without Procedures Listed In 8 U.S.C. § 1229a.

The government's exclusion of Dr. Samirah without any sort of hearing runs contrary to the statutory and regulatory

scheme created by the authority of Congress to determine the deportation and exclusion of all immigrants. The language of 8 U.S.C. § 1229a(a)(3) cannot be more clear:

> Unless otherwise specified in this chapter, a proceeding under this section shall be the *sole and exclusive procedure* for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.

(emphasis added). The procedures listed in § 1229a require that all aliens whose inadmissibility or deportability are being determined must be given a proceeding in front of an immigration judge. *Id.* at § 1229a(a)(1). Aliens have also been granted certain rights during these proceedings including 1) a right to counsel at their own expense; 2) a reasonable opportunity to examine evidence used against them and to cross examine any witnesses presented by the government; and 3) a right to have a complete record of all testimony and evidence at the proceeding. *Id.* at § 1229a(a)(4)(A-C). Dr. Samirah was not allowed to participate in a proceeding in front of an immigration judge nor was he allowed to examine any evidence against him. The government summarily revoked his advance parole and now argues that it did not have to follow the § 1229a procedures because Dr. Samirah was temporarily out of the country, albeit with the government's complete approval and permission.

The statutes and regulations governing advance parole are meant to protect the interests of foreign nationals who reside in the United States legally but do not have permanent resident status. Advance parole is designed to provide foreign nationals, who need to temporarily depart the country for various reasons, an opportunity to re-enter the country without jeopardizing their immigration application process. *See* Report to Congress, Use of the Attorney General's Parole Authority Under the Immigration and Nationality Act Fiscal

Years 1998-1999. The statute that gives the Attorney General the power to grant paroles indicates that after the parole period is complete, the alien's case would resume at the point where it was before the parole was granted. 8 U.S.C. § 1182(d)(5)(A). *See also* 8 C.F.R. § 212.5(e)(2)(i) ("upon accomplishment of the purpose for which parole was authorized * * * he or she shall be restored to the status he or she had at the time of parole").

§ 1229a procedures are not meant to be and should not be used as tools of oppression by the government—as was the case in Dr. Samirah's situation—to deny the very due process rights they are meant to protect. *See Navarro-Aispura v. INS*, 842 F. Supp. 1225, 1229 (N.D. Cal. 1993) (stating that district director had no authority to use advance parole to arbitrarily require an alien to go through proceedings inconsistent with his status at the time of parole grant).

As is common among advance parolees, Dr. Samirah was awaiting for the adjudication of his adjustment of status application when he was permitted to visit his ailing mother in Jordan. However, unlike other advance parolees, he did not resume the application process for his adjustment of status when he tried to return to the country. Far from being "restored to the status" he had when he was granted parole, he was told that his advance parole was revoked and he was not given deportation, exclusion, or any other proceedings to contest the government's decision. In *Patel*, a foreign national, while in the middle of an application process to adjust his status to a non-preference investor, was granted advance parole to visit his ailing father. *Patel v. Landon, Jr.*, 739 F.2d 1455 (9th Cir. 1984). After he returned to the U.S., his application was denied and he was placed in exclusion proceedings. The court agreed with petitioner's argument that he should be adjudicated in deportation proceedings because he had a valid visa before he left the country. The court stated that since his departure was innocent and brief,

his application must be adjudicated without regard to his departure. *Id.*, 739 F.2d at 1457. Other advance parolee cases also involve situations where the parolee is allowed to adjudicate his or her status in a formal proceeding. *See Sillah v. Davis*, 252 F.Supp.2d 589, 593-594 (W.D. Tenn. 2003) (alien put into deportation proceedings after his parole was revoked, treating him as an arriving alien because that was the status he had when he was granted parole).

The government's exclusion of Dr. Samirah circumvents the procedures dictated by 8 U.S.C. § 1229a. By revoking the permission it granted Dr. Samirah to visit his ailing mother, while his adjustment of status application was still pending, the government has not only ignored the law, but also has acted in a patently unfair manner by grossly abusing its discretionary power over advance parolees. The government's action affects not only Dr. Samirah, but also the increasing number of foreign nationals that are seeking to adjust their status. They all have the right to rely on advance parole without worrying that the government may arbitrarily pull the plug on their adjustment applications without the benefit of any hearing. To preserve these statutory rights and expectations, the Court must not permit the government's violation.

II. IF THE GOVERNMENT'S EXCLUSION STANDS, FOREIGN NATIONALS WILL NO LONGER BE ABLE TO RELY ON THE GOVERNMENT'S GRANT OF ADVANCE PAROLE.

Immigrants continue to flock to the United States for the same reasons they have done so in the past: opportunity and freedom from tyrannical regimes who have no respect for the rule of law. In 2002 alone there were 1,063,732 new

immigrants in the United States.[4] A vast majority of these new immigrants (679,305) were already living in the country and became immigrants through adjustment of status. Like Dr. Samirah, most of these immigrants are productive members of society with jobs and families.[5] For many years, the number of foreign nationals applying for adjustment to permanent resident status has increased. Predictably, this had lead to an increase in the number of advance paroles requested and granted by the government. For example, in 2003 there were 23,582 advance paroles granted compared to 8,344 in 1998.[6]

These numbers show the increasing importance of the decision in front of the Court. Advance paroles play a very important role in many foreign nationals' lives. The government has realized the increase in number of foreign nationals awaiting decisions regarding their applications for permanent residency. With this is mind, the government has repeatedly clarified its policy of granting advance parole to applicants for "bona fide business or personal reason[s]."[7] Like Dr. Samirah, these applicants rely on advance parole to take care of personal and business matters. They also rely on

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[4] Office of Immigration Statistics, U.S. Dept. of Homeland Security, *2002 Yearbook of Immigration Statistics*, Table 4 (2003).

[5] In fact, according to a survey conducted by the U.S. Census Bureau, 69% of all non-citizens over the age of 16 are part of the work force compared to 51% of citizens (native and naturalized). U.S. Census Bureau, *Current Population Survey* (March 2002).

[6] *2002 Yearbook of Immigration Statistics* at p. 90.

[7] James A. Puleo, Office of Programs, Immigration and Naturalization Service, *Issuance to Applicants for Adjustment of Status under Section 245* (April 20, 1995) (citing public interest in revising advance parole guidelines due to increase in applications for adjustment of status). *See also* Paul W. Virtue, Office of Programs, Immigration and Naturalization Service, *Advance Parole for Adjustment of Status Applicants Under Section 245; Issuance of Form I-512* (August 15, 1997).

the promises made by the government that they can resume their applications once they return to the United States. So far, Dr. Samirah has seen the government turn its back on its promise to allow him to resume his application to become a permanent resident in complete contravention of his statutory, regulatory, and constitutional rights. The appellate court's decision allows the government to violate the law and deprive foreign nationals of long standing rights that they have cherished for many years. It must not be allowed to stand.

III. POLICY CONSIDERATIONS IN THIS CASE GIVE RISE TO EQUAL PROTECTION CONSIDERATIONS THAT WARRANT A GRANT OF WRIT OF CERTIORARI

The post-September 11, 2001, treatment of ordinary Muslims in America by the government leaves no doubt that the executive branch has embarked on a systematic and deliberate assault on the civil liberties of American Muslims. From September 11, 2001 to November 2003, the change in number of deportation orders of immigrants, from primarily Muslim countries, had risen 31.4%, while the rate for immigrants from other countries saw only a 3.4% growth. *See* Simpson, Cam, *et. al.*, *Immigration Crackdown Shatters Muslim Lives,* Chicago Tribune, Nov. 16, 2003. American Muslims have been arrested as "enemy combatants" on U.S. soil and held incommunicado for years without ever being charged or allowed a meeting with an attorney. *See Padilla v. Rumsfeld,* No. 03-2235, 2003 U.S. App LEXIS 25616 (2nd Cir. December 18, 2003). The Attorney General singled out thousands of immigrants from predominantly Muslim countries for "special registration" procedures. *See* Department of Justice Press Release, *Attorney General Ashcroft announces implementation of the first phase of the national security entry-exit registration system,* Aug. 12, 2002. Further, a thorough search of case history finds no other instance of the INS revoking Advance Parole while an applicant who is

domiciled in the United States is out of the country. The fact that this singular act of circumventing the judicial hearing requirement has been directed toward a well-known member of the Islamic community is not lost on American Muslims. The District Court reviewing Dr. Samirah's case appropriately described the government's revocation in absentia as a "kind of 'gotcha' quality" event that was "demeaning to this country." *See Samirah v. Ashcroft, et al.*, No. 03-C-129, slip op (N.D.Ill. March 25, 2003).

Taken in context with other government actions that have negatively impacted the American-Muslim community, the Appellate Court's refusal to review Samirah's case is almost as disturbing as the government's advance parole revocation. The chilling implication for the American-Muslim community is that the government can take any action against them and they may have no legal means for recourse. *Samirah v. O'Connell,* 335 F.3d 545 (7th Cir. 2003). If we do reach that point, the "dangers to human liberty" from total judicial acquiescence to the Executive Branch "are frightful to contemplate." *Ex parte Milligan*, 71 U.S. 2, 125 (1866).

While it is true that in its war on terrorism, the President "has a discretion vested in him [to protect our country];" however, the fact remains that the Constitution imposes limits on such discretion in order to "guard the foundations of civil liberty against the abuses of unlimited power." *Brown v. United States*, 12 U.S. (8 Cranch) 110, 153 (1814) (Story, J., dissenting); *see, also, Milligan*, 71 U.S. at 126. Even assuming that the government is acting with best of motives, this Court has previously cautioned that "'[e]xperience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. * * * The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.'" *Chandler v. Miller*, 520 U.S. 305, 322 (1997) (quoting *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissent-

ing)). Further, that "[t]his nation * * * has no right to expect that it will always have wise and humane rulers * * *. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln." *Milligan*, 71 U.S. at 126.

As a country, we value highly the notion that equal protection, liberty, and justice is for all people, regardless of race, creed or color. Our history provides only one modern-day example of the judiciary upholding a law authorizing the disparate treatment of a specific ethnicity. *Korematsu v. United States*, 323 U.S. 214 (1944). The shameful event of interning Japanese-Americans left a deep scar on our national character, one that was recently addressed with a Presidential apology and reparations.[8] We also have the unfortunate legacy of Jim Crow laws that institutionalized discrimination against African-Americans. The perpetuation of this untenable discrimination strained our democracy and led to violent societal upheavals nearly forty years ago. However, the consequences of this past discrimination still cause great problems in our country. The dilemma facing American Muslims today is the same wolf, discrimination, in different clothing.

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[8] President Clinton formally apologized to interned Japanese-Americans recognizing the grave injustice done to them and also acknowledging the shameful legacy this event case upon our nation. *See Letter from President Bill Clinton of October 1, 1993*. ("Over fifty years ago, the United States Government unjustly interned, evacuated, or relocated you and many other Japanese Americans. Today, on behalf of your fellow Americans, I offer a sincere apology to you for the actions that unfairly denied Japanese Americans and their families fundamental liberties during World War II. In passing of the Civil Liberties Act of 1988, we acknowledged the wrongs of the past and offered redress to those who endured such grave injustice. In retrospect, we understand that the nation's actions were rooted deeply in racial prejudice, wartime hysteria, and a lack of political leadership. We must learn from the past and dedicate ourselves as a nation to renewing the spirit of equality and our love of freedom. Together, we can guarantee a future with liberty and justice for all.")

The guilt or innocence of Dr. Samirah is not being debated here, neither is his right to free speech or freedom of association. What is being debated is the government's complete disregard of Dr. Samirah's due process rights. While it is true that there is nothing overtly in the record to show that Dr. Samirah was singled out for being an Arab or Muslim; it is equally true that the government's singling out of Dr. Samirah is yet another example of Muslims and Arabs residing in the United States being singled out by the government and subjected to a separate and unequal standard of justice. Some enemies of America, who to the misfortune of American Muslims label themselves with the same faith as patriotic Muslims do, are described as hating our American freedoms and way of life. *See* President George Bush, *Address to the Nation* (September 20, 2002). Therefore, it would be a tragic irony if we validated this hatred attributed to our enemies by in turn denigrating our own freedoms and commitment to a diverse, tolerant society by denying such values to American Muslims.

Our nation has explicitly stated that it is trying the win the hearts and minds of Muslims around the world. Ironically, there was even a State Department sponsored ad-campaign depicting the extremely positive lives of American Muslims that was broadcast throughout the Muslim world.[9] Yet the Executive Branch's domestic agenda, as illustrated in Dr. Samirah's case, is beginning to paint an entirely different story. Furthermore, it would be naïve to assume that the post-

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[9] Claire Cozens, *US scraps Muslim ad campaign*, GUARDIAN, UK, Jan. 17, 2003. ("But the so-called "Shared values campaign, conceived by the former advertising executive Charlotte Beers, proved controversial with critics describing it as straightforward propaganda. Youssef Ibrahim, a senior fellow at the US council on foreign relations, described the campaign as 'extremely poor.' 'It was like this in the 1930s and the government was running commercials showing happy blacks in America,' he told the Wall Street Journal.")

September 11th domestic treatment of American Muslims is not being followed by a global audience. *See* Khalid Hassan, *Justice Department should apologize to Arabs, Muslims: ACLU*, DAILY TIMES, PAKISTAN, Apr. 14, 2004; Andrew Gumbel, *The Disappeared*, INDEPENDENT, UK, Feb. 26, 2002. ("Since 11 September last year, up to 2,000 people in the United States have been detained without trial, or charge, or even legal rights. The fate of most is unknown. Andrew Gumbel investigates a scandal that shames the land of the free.") By upholding the rule of law in this case, the Court has the opportunity to affirm to the rest of the world, that America has learned from its past mistakes and shall uphold the rights of the disenfranchised, particularly when it is not expedient or popular to do so. "The concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and if allowed to flourish would destroy the benefit of a written Constitution and undermine the basis of our government." *Reid v. Covert*, 354 U.S. 1, 14 (1957) (plurality opinion). To put it simply, the Court cannot let the most vulnerable among us, immigrants in general, and particularly those of Arab or Muslim backgrounds like Dr. Samirah, be deprived of liberty without due process of law in order to falsely convince ourselves that our nation is more secure as a result. As our founding father Benjamin Franklin warned us long ago, "[t]hose who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety." Benjamin Franklin, AN HISTORICAL REVIEW OF THE CONSTITUTION AND GOVERNMENT OF PENNSYLVANIA, title page (1759) (Arno Press reprint 1972).

The message the Appellate Court's decision sends to the American Muslim community is that even if the law is on your side, you will lose. The community perceives that as long as the government has a policy, written or unwritten, that all Muslims are "suspect," it will use any kind of

"gotcha" tactics to get its way, even using absurd technical arguments at the appellate level to undo sound legal decisions. This necessarily instills a sense of futility in the community, that even if you play by the rules—you still lose—as the government can break the rules whenever it wants.

The perception of many in the American-Muslim community familiar with this case is that Dr. Samirah became a target for adverse government action because of his political activism. If the government is able to deny fairness and equity to such a prominent figure among American Muslims, the result will be a chilling of political involvement and speech on the community as a whole. As Americans, we understand that there is a value in voicing our politics and that the exchange of differing opinions in the marketplace of ideas makes us a stronger society. Therefore, to generate such fear in a minority that it would eradicate their voice from our national conversation would only serve to make us weaker as a nation. In practical terms, upholding unjust actions similar to those taken against Dr. Samirah, will inevitably lead a decline in relations between the government and a vital domestic community.

The vilifying of an unpopular minority in uncertain times to rally the support of the majority is not a new tactic, either in our society or many others. This tactic does serve a political end, otherwise it would not be attempted so frequently. Rhetorically, if not substantively, it provides the government the argument that it is zealously ensuring our security.[10] In the name of protecting our nation against future

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[10] The government revoked Samirah's advance parole because the INS allegedly received information that he was a "security risk to the United States." *Samirah v. O'Connell*, 335 F.3d 545 (7th Cir. 2003). In addition, the government denied exercising "ongoing control, restraint or responsibility over him" and that Samirah may "wander the earth" so long as he does not wander back to the United States. *Ibid.* However, in the context

terrorist attacks, the government has already significantly curtailed the rights of Muslims in the United States by denying them equal access to justice. This is not a solution, or rather, it is not an American solution. It is the very nature of our system of laws to protect the innocent. We choose not to paint our population in broad-brush strokes, because to do so would betray our very character.

Among the first descriptions that one learns of America, whether it be in elementary school or in a naturalization class, is that our country is "a great melting pot." We are people of many faiths, cultures, and ethnicities. Every immigrant population has contributed its values to our national fabric and, at the same time, assimilated in to American society. As a nation, we recognize a great worth in the open sharing of culture. If, however, we force a people to go into collective hiding for its own security, we violate the principles of the melting pot. American Muslims who are great contributors to our society will think twice before contributing again. The opportunity to assimilate will be lost and a thorough disenfranchisement of an entire class of Americans will ensue.

When arriving upon our shores, most immigrants leave behind the pandemic mistrust of government that exists throughout much of the globe. They arrive to find a representative government accountable to its citizenry, a government that believes in the rule of law. The duty of the Court is to ensure that the relationship between the leadership and those being led remains sacred. If, as in the present case, the government is able to turn back on its word with absolutely no fear of oversight by the judiciary, segments of our population will believe that this government is no

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of the U.S. government arresting terror suspects around the globe and imprisoning them in Guantanamo Bay, Cuba, it is incomprehensible that the government would allow someone who is truly a national security risk to "wander the earth" with no control over them whatsoever.

different than the ones they left behind. The "pernicious" notion that a Constitutional mandate "can be suspended during any of the great exigencies of government * * * leads directly to anarchy or despotism." *Milligan*, 71 U.S. at 121.

We request that this Court recognize that the ramifications of any decision made in the instant case will have an impact on immigrants and an entire, *de facto*, suspect class of Americans. In the proverbial sense, there is more here than meets the eye. The decision of the Seventh Circuit Court of Appeals to preclude itself from reviewing the case at bar is not only erroneous as a matter of law, but threatens to set our nation backwards, to repeat discredited and shameful mistakes from our past.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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